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August 4, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Western Wireless Corporation Petition for Designation as an
Eligible Telecommunications Carrier and for Related Waivers
for Crow Reservation, MT**

Dear Ms. Salas:

On behalf of Western Wireless Corporation ("Western Wireless"), I am enclosing for filing a Petition for Designation as an Eligible Telecommunications Carrier ("ETC") and for Related Waivers. The Petition requests that the FCC designate Western Wireless as an ETC pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6) to allow Western Wireless to provide universal service to the Crow Reservation in Montana.

If you have any questions regarding this matter, please contact me.

Respectfully submitted,



Michele C. Farquhar
Counsel for Western Wireless Corp.

Enclosures

cc: Attached Service List

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List ABCDE

BRUSSELS BUDAPEST LONDON MOSCOW PARIS PRAGUE WARSAW

BAITMORE, MD BETHESDA, MD COLORADO SPRINGS, CO DENVER, CO LOS ANGELES, CA McLEAN, VA
\\DC-68551/2-0923414.01

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AUG 27 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
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WESTERN WIRELESS CORPORATION)
)
Petition For Designation as an)
Eligible Telecommunications Carrier)
And For Related Waivers To Provide Universal)
Service To The Crow Reservation in Montana)

PETITION FOR ETC DESIGNATION AND RELATED WAIVERS

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August 4, 1999

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EXECUTIVE SUMMARY

Only about 45 percent of the households on the Crow Reservation, located in a remote area of south-central Montana, have access to telephone service. Western Wireless proposes to help address this situation by providing a universal service offering on the Crow Reservation, using its cellular infrastructure and a Wireless Local Loop form of customer equipment. The Crow Tribal Council has a strong interest in improving telephone service to the Native American residents of the reservation, and has expressed its support for Western Wireless' universal service efforts in this regard.

Western Wireless demonstrates that its planned offering satisfies all of the criteria for designation of Eligible Telecommunications Carriers ("ETCs") by the Commission pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended. Designating Western Wireless as an ETC will advance the public interest because the planned service will introduce new telecommunications technologies to an underserved community, and will promote competition in the provision of universal service. To enable Western Wireless to provide universal service economically to the Crow Reservation, the Commission also should grant certain waivers of its rules governing high-cost and low-income funding.

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FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of)
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 Petition For Designation as an)
 Eligible Telecommunications Carrier)
 And For Related Waivers To Provide Universal)
 Service To Crow Reservation, Montana)

PETITION FOR ETC DESIGNATION AND RELATED WAIVERS

Western Wireless Corporation's wholly-owned subsidiaries, WWC Holding Co., Inc., and Western CLEC Corporation (collectively, "Western Wireless"), by counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act"), 1/ and the Commission's *Public Notice on Section 214(e)(6) Procedures*, 2/ hereby petitions for designation as an eligible telecommunications carrier ("ETC") for a service area comprising the Crow Reservation in the state of Montana. Western Wireless also requests, pursuant to Section 1.3 of the Commission's rules, 3/ waivers of certain rule provisions to facilitate Western Wireless' offering of universal service throughout its designated service area.

1/ 47 U.S.C. § 214(e)(6).

2/ Public Notice, *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, FCC 97-419, 12 FCC Rcd 22497 (1997) ("*Public Notice on Section 214(e)(6) Procedures*").

3/ 47 C.F.R. § 1.3.

**I. WESTERN WIRELESS PROPOSES TO OFFER HIGH QUALITY
UNIVERSAL SERVICE TO CONSUMERS ON THE CROW
RESERVATION**

Western Wireless provides cellular service in 17 western states, including Montana. Western Wireless has been, and continues to be, very active in its efforts to enter the universal service market in high-cost and rural areas, and to make available to residential and business consumers a high-quality, competitive universal service offering to meet their telecommunications needs. In furtherance of this objective, Western Wireless has applied for ETC status in 13 states, 4/ and has actively participated in universal service proceedings before the FCC and state commissions. Recognizing the telecommunications needs on the Crow Reservation in Montana, Western Wireless has been working with tribal leaders on their telecommunications needs and seeks herein to become an ETC and to provide universal service on the reservation, as described below.

**A. The Need for Western Wireless' Universal Service Offering on
the Crow Reservation.**

The residents and businesses on the Crow Reservation could benefit substantially from the new universal service offering that Western Wireless plans to provide. The need for affordable telecommunications service is evidenced by the fact that **only 45.1 percent of the households on the reservation have access**

4/ The states in which Western Wireless has sought designation as an ETC are Colorado, Kansas, Minnesota, Montana, North Dakota, Nebraska, New Mexico, Nevada, Oklahoma, South Dakota, Texas, Utah and Wyoming.

to basic telephone service. 5/ Western Wireless' proposed universal service offering would make available an affordable telephone service in areas unserved or underserved by the incumbent local exchange carriers ("ILECs"), and would likely result in a significant increase in telephone subscribership on the Crow Reservation. Attached hereto as Exhibit A is a Joint Statement of Interest signed by John Stanton, Chairman of Western Wireless Corporation, and Clara Nomee, Madam Chairman of the Crow Nation, in which the Crow Tribal Council states that it is "interested in providing the Native American residents of the Crow Reservation with affordable telephone service that includes an expanded local calling area and supports Western Wireless' universal service efforts." 6/

The Crow Reservation, located in south-central Montana southeast of Billings and bordering the state of Wyoming, consists of over 2 million acres of land, comprised primarily of mountain ranges, residual uplands, and alluvial bottoms in an area almost twice the size of the state of Delaware. The reservation has a population of 6,498, with the majority of the individuals living in the following four geographically isolated communities:

- Crow Agency, home to approximately 3,245 residents, is the site of the Crow/Northern Cheyenne Indian Hospital, the Bureau of Indian Affairs office, and the Crow Tribal Government (Crow Agency is located 65 miles from the major business community of Billings, Montana);

5/ *Housing of American Indians on Reservations -- Equipment and Fuels*, Bureau of the Census Statistical Brief, April 1995.

6/ See Exhibit A.

- Lodge Grass, home to 2,125 residents and the site of the Lodge Grass Health Center;
- Pryor, home to approximately 1,018 residents and the site of the Pryor Health Station; and
- Wyola, home to approximately 440 residents.

There are also numerous small communities, ranches, and family homes located throughout the reservation, many in extremely remote, hard-to-serve areas. The economy is largely dependent upon royalties from coal, gas and oil leases, agricultural land leases, and the federal government, which is the reservation's largest employer. The unemployment rate on the reservation is 85% and the per capita income is approximately \$4,243.00. ^{7/} The Reservation has eight elementary schools, three high schools, and the Little Big Horn Community College. The schools have limited access to the telecommunications services necessary for high-quality education that are generally available in urban schools.

B. Western Wireless' Planned Universal Service Offering.

Western Wireless currently provides the supported universal services and functionalities enumerated in Section 54.101(a) of the Commission's rules ^{8/} throughout the company's cellular service area, including the Crow reservation. Upon designation as an ETC, Western Wireless will make available a specially

^{7/} See TILLER'S GUIDE TO INDIAN COUNTRY: ECONOMIC PROFILES OF AMERICAN INDIAN RESERVATIONS 400-401 (Bow Arrow Publishing Co., 1996); *see also* Crow Tribe Community Environmental Profile (at www.mnisose.org/profiles.crow.htm).

^{8/} 47 C.F.R. § 54.101(a).

tailored universal service offering, which includes all these elements, throughout the Crow Reservation.

Western Wireless' universal service offering will be provided over its existing cellular network infrastructure and spectrum, including the same antenna, cell site, tower, trunking, mobile switching and interconnection facilities as used by the company to serve its existing conventional mobile cellular service customers. 9/ To maximize signal coverage and service availability for its universal service offering, Western Wireless will deploy additional cell sites and channels, as necessary. 10/

Initially, Western Wireless will provide its universal service offering to customers using wireless local loop customer premises equipment ("WLL CPE") that simulates many of the attributes of local exchange telephone service provided by the incumbent LECs. For example, the WLL CPE provides "dial tone," which allows consumers to use existing telephones, computers, facsimile equipment and other standard telecommunications devices. The WLL CPE serves as the customer interface to the cellular network in the same manner as a handheld cellular phone unit.

9/ Western Wireless holds the A Block cellular license for the MT-9 Rural Service Area ("RSA") and the Billings Metropolitan Service Area ("MSA"), which together serve the Crow Reservation.

10/ Western Wireless is working with the reservation to identify cell site locations to optimize service on the reservation and will file any applications necessary with the Commission to serve areas that do not fall within its currently authorized Cellular Geographical Service Area ("CGSA"). If Western Wireless files applications for such cell sites with the Commission, those applications should be expeditiously granted.

The WLL CPE can be used with a small, low-gain antenna or a high-gain antenna and can be configured with a high power transmitter to optimize signal quality. 11/

The attraction of the WLL CPE, from a consumer perspective, is that the unit provides "dial tone" and allows for the connection of existing telephone and peripheral devices. Using this same WLL CPE technology, Western Wireless currently provides "universal service" to residents of Reese River and Antelope Valley, Nevada, and Regent, North Dakota. Consumer demand will determine whether Western Wireless will provision its universal service offerings with a mobility component similar to conventional cellular service. The technical and operational characteristics of the WLL CPE are described in detail in Exhibit B.

Western Wireless' universal service offering will be tailored to meet the consumers' communications needs. Western Wireless' standard universal service offering will look similar to ILEC-like offerings, but with certain enhancements. For a fixed monthly charge, Western Wireless will initially offer consumers the core supported services with unlimited local usage, an expanded local calling area, a per-minute charge for long distance calls, and optional features and services, such as voice mail, caller-ID, call waiting, call forwarding, and conference calling. Western Wireless also anticipates making available a usage-sensitive plan under which a universal service customer would receive the core

11/ In a quasi-fixed application, the WLL CPE uses commercial A/C power and can be connected to a high-gain antenna affixed to the home. In a mobile application, the WLL CPE operates using a battery much like a handheld phone and a small antenna attached to the unit.

supported services with a limited amount of minutes and a greatly expanded local calling area, a per minute charge for interexchange calls, and optional features and services. Western Wireless anticipates, however, that its universal service offering on the Crow reservation will be similar to, if not the same as, its Wireless Residential Service ("WRS") offering in Regent, North Dakota.

II. WESTERN WIRELESS SATISFIES ALL THE STATUTORY PREREQUISITES FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Western Wireless satisfies each of the five elements set forth in the Commission's *Public Notice On Section 214(e)(6) Procedures*, as shown below.

A. Western Wireless' Proposed Universal Service Offering on the Crow Reservation is Subject to the Jurisdiction of the FCC.

Western Wireless' universal service offering to Native American residents and businesses on the Crow Reservation is not subject to state jurisdiction. ^{12/} Western Wireless is a Commercial Mobile Radio Service ("CMRS")

^{12/} Western Wireless has submitted a petition for designation as an ETC with the Montana Public Service Commission for areas that fall within the company's cellular service area in Montana. In contrast, the instant Petition seeks designation of the company as an ETC solely on the Crow Reservation and seeks federal support for the total costs of providing universal service on the reservation. As described herein, designating Western Wireless as an ETC for the Crow reservation and providing the company with the necessary universal service funding support will result in numerous public interest benefits. *See supra*, Section I.A. (re benefits derived from the availability of basic telephone service from new entrant ETC to reservation today suffering from 45% telephone penetration rate); *infra*, Section II.E. (re competitive and advanced-service benefits arising from designation of an additional ETC). Thus, the public interest would clearly be served by the FCC granting this Petition.

provider that is statutorily exempt from rate and entry regulation by state commissions, 13/ and its proposed universal service offering falls within the areas of tribal, rather than state, authority, as recognized by the U.S. Supreme Court. 14/ Finally, the Commission should adhere to its policy of, in the absence of evidence to the contrary, accepting an ETC petitioner's representation of its status as a common carrier not subject to the jurisdiction of a state commission. 15/

B. Western Wireless Offers or Will Be Able to Offer All of the Services Supported by the Federal High-Cost Universal Service Program.

Western Wireless satisfies the requirement set forth in FCC precedent that an ETC designated pursuant to Section 214(e)(6) "offer, *or will be able to offer* all of the services designated for support by the Commission." 16/ As described

13/ 47 U.S.C. § 332(c)(3)(A). Like all CMRS providers, Western Wireless is also a "common carrier." See 47 U.S.C. §§ 153(10), 214(e)(1), 332(c)(1)(A).

14/ "To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservation, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana v. United States*, 450 U.S. 544, 566-66 (1980) (citations omitted).

15/ *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd 22433, 22435-36, ¶ 7 (CCB 1998) ("*Saddleback*").

16/ *Designation of Fort Mojave Telecommunications, Inc., et al, as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd 4547, 4553, ¶ 11 (CCB 1998) (emphasis added) ("*Fort Mojave*"). An

below, Western Wireless currently offers each of the supported services enumerated in Section 54.101(a) of the rules. Once designated as an ETC, Western Wireless intends (and commits) to provide a "universal service" offering that includes all of the supported services to consumers on the Crow Reservation.

1. Voice-Grade Access To The Public Switched Network. As an existing cellular service provider in Montana, Western Wireless provides voice-grade access to the public switched network. Through existing interconnection agreements with ILECs such as U S West, Western Wireless is able to originate and terminate telephone service for all of its subscribers.

2. Local Usage. Western Wireless currently offers several service options that include varying amounts of local usage in monthly service plans. Western Wireless intends to offer its universal service customers a rate plan that includes unlimited local usage, as described above. Thus, even though the FCC has yet to adopt any specific quantity of minimum local usage ETCs must provide for designation, 17/ Western Wireless satisfies the local usage criterion for ETC

affidavit attesting to Western Wireless' ability and commitment to offer each of the supported services is attached hereto at Exhibit C. Western Wireless already provides each of the supported services. Western Wireless intends to make the necessary investments to provide service throughout the reservation once it receives ETC designation and the requested waivers. In any event, *Fort Mojave* makes it clear that the Commission will designate carriers as ETCs, pursuant to Section 214(e)(6), upon finding that they "offer or will be able to offer" the supported services throughout the service area.

17/ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd. 21252 (1998) (seeking comment on appropriate number of minutes of "free" local usage, if any, ETCs should be required to provide); *Federal-State Joint*

designation based upon its planned offering of unlimited local usage, or a package of minutes that satisfies any future local usage requirement adopted by the FCC.

3. Functional Equivalent Of Touch-Tone ("DTMF") Signaling.

Western Wireless currently uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling.

Western Wireless therefore meets the requirement to provide DTMF signaling or its functional equivalent. 18/

4. Single Party Service. Western Wireless meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls. 19/

5. Access To Emergency Service. Western Wireless currently offers access to emergency service throughout its cellular service area by dialing 911. Enhanced 911 ("E911"), which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is required only if a public emergency service provider makes arrangements for the delivery of such information. 20/ To date, no public emergency service provider in

Board on Universal Service, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 12 FCC Rcd. 18514 (1997) (same).

18/ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8815, ¶ 71 (1997) ("*Universal Service First Report and Order*").

19/ *Id.* at 8810, ¶ 62.

20/ *Id.* at 8826-27, ¶ 90.

Montana has made arrangements for the delivery of ANI or ALI from Western Wireless. In any event, the Commission has already held that wireless providers may be designated as ETCs despite the current unavailability of E-911. 21/ Western Wireless requests leave to be designated as an ETC during the period it is completing preparations for offering E-911 service. 22/ By providing 911 service and being capable of providing E-911 service upon request once technologically feasible, Western Wireless meets the requirement to provide access to emergency service.

6. Access To Operator Services. Western Wireless offers its subscribers access to operator services and will make such services available throughout its designated service area.

7. Access To Interexchange Service. Western Wireless presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several interexchange carriers ("IXCs"). Customers are also able to reach their IXC of choice by dialing the appropriate access code.

8. Access To Directory Assistance. Western Wireless meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212."

21/ *Id.* at 8826-27, ¶ 90.

22/ *Id.* at ¶¶ 90-91.

9. Toll Limitation For Qualifying Low-Income Customers. Once designated an ETC, Western Wireless will participate in Lifeline as required, and will offer toll blocking in satisfaction of the FCC's requirement. Today, the company provides toll blocking services for international calls and customer selected toll calls. Western Wireless will utilize the same toll blocking technology to provide toll limitation for qualifying low-income customers, at no charge, as part of its universal service offerings.

C. Western Wireless' Universal Service Offering Will Use Its Own Facilities.

Western Wireless will provide the supported services under Section 214(e)(1)(A) of the Act and Section 54.101(a) of the Commission's rules using Western Wireless' existing cellular network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network.

D. Western Wireless Will Advertise Its Universal Service Offering.

Western Wireless will use the same advertising techniques it currently uses to advertise its existing service offerings, which include television, radio, newspaper, and billboard advertising, as well as special targeted advertising. In addition, Western Wireless will ensure that its universal service advertising is placed in media that are targeted to residents of the Crow Reservation. The advertising used by Western Wireless will be designed to reach all residents of the Crow Reservation to make them aware of the availability of the supported

services. 23/ Moreover, given the fact that ETCs receive universal service support only to the extent they serve customers, and given the investments Western Wireless plans to make to enhance its service to the Crow Reservation, Western Wireless will have strong economic incentives, reinforcing its statutory obligations, to vigorously promote its universal service offering on the Crow Reservation. 24/

E. Designating Western Wireless as an ETC in a Service Area Partially Served by a Rural Telephone Company Will Advance the Public Interest.

Western Wireless is not a "Rural Telephone Company" as defined by Section 3(37) of the Act. 25/ Portions of the Crow Reservation, however, are within the study area of Project Telephone Company, Inc. ("Project"), a Rural Telephone Company. Other portions of the Crow Reservation are served by U S West, which is not a Rural Telephone Company.

23/ *Fort Mojave*, 13 FCC Rcd at 4554, ¶ 13.

24/ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Seventh Report and Order and Thirteen Order on Reconsideration, FCC 99-119, at ¶ 9 (rel. May 28, 1999) ("*Universal Service Seventh Report and Order*") (recognizing that "potential new entrants to the local market in high-cost areas are at a competitive disadvantage relative to incumbents, which have access to much greater implicit support[, but] explicit mechanisms may encourage competitors to expand service beyond urban areas and business centers in all areas of the country").

25/ 47 U.S.C. § 153(37).

1. Western Wireless Seeks Designation For A Service Area Comprising The Crow Reservation.

The service area for which Western Wireless seeks designation as an ETC includes all of the Crow Reservation and some limited adjacent areas. 26/ The LEC wire centers that serve the Crow reservation and comprise the service area for which Western Wireless proposes to be designated are identified in Exhibit D.

Alternatively, the Commission could designate Western Wireless as an ETC for only the area included within the boundaries of the Crow Reservation.

2. Designating Western Wireless As An ETC For This Service Area Will Advance The Public Interest.

Given that a portion of Western Wireless's requested service area falls within the study area of a Rural Telephone Company, the Commission must find that designating an additional ETC is in the public interest. 27/ The public interest clearly would be served by designating Western Wireless as an ETC. As evidenced

26/ Portions of Project's study area fall outside the boundaries of the reservation. To the extent that Section 214(e)(5) requires a competitive entrant designated as an ETC within a Rural Telephone Company's study area to provide service to the entire study area, Western Wireless respectfully requests designation as an ETC for the entire study area served by Project, including the area outside the boundaries of the Crow Reservation, as well as the entire territory of the Crow Reservation (including portions outside Project's study area). The LEC wire centers that comprise Project's study area and this expanded designated service area are identified in Exhibit D. In the alternative, the Commission could "waive" the study area requirement of Section 214(e)(5), *i.e.*, forbear under Section 10 of the Act, 47 U.S.C. § 160, from enforcing Section 214(e)(5) in this context, or the Commission could designate a different service area, as provided in Sections 214(e)(5) and (6).

27/ 47 U.S.C. § 214(e)(2). Under Section 214(e)(6), the Commission stands in the place of a state commission for this purpose.

in the Joint Statement of Interest attached hereto, "the Crow Tribal Council is interested in providing the Native American residents of the Crow Reservation with affordable telephone service that includes an expanded local calling area and supports Western Wireless' universal service efforts." 28/

Designating Western Wireless as an ETC also will serve the public interest by facilitating competition in the provision of universal services to the benefit of consumers in the service area. 29/ Designating Western Wireless as an ETC also will advance universal service by bringing consumers on the reservation new telecommunications services, including wireless local loop service. Moreover, designation of Western Wireless as an ETC for the Crow Reservation will promote rapid development of new technologies in this rural area. Not only will Western Wireless deploy advanced facilities, the ILECs -- U S West and Project -- will have an incentive to improve their networks to stay competitive, resulting in the availability of additional new technologies for residents of the reservation. This is precisely the result Senator Nighthorse Campbell was seeking in his letter to Chairman Kennard in which he expressed his "concerns related to the provision of

28/ See Exhibit A.

29/ See *Universal Service First Report and Order*, 12 FCC Rcd at 8781, ¶ 4 (quoting Joint Explanatory Statement recital that goal of 1996 Act is to establish "a pro-competitive . . . framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to *all Americans* by opening *all* telecommunications markets to competition") (emphasis added).

telecommunications services to Native communities and rural areas around the nation.” 30/

One of the significant public interest benefits of designating Western Wireless as an ETC would be the availability of new telephone services that are not available today. Western Wireless has been discussing the telecommunications needs of the reservation with tribal leaders and has learned that the limited local calling area available today to residents of the reservation makes telephone service expensive because toll charges apply to calls between communities on the reservation. Telephone service with such a restricted local calling area is of limited value to the reservation. Western Wireless will address this problem by making available to the residents of the reservation a local calling area that includes the entire reservation, thereby allowing residents to call other communities throughout the reservation toll-free. This new service will significantly benefit the reservation and serve the public interest.

Designating Western Wireless as an ETC also would not have a significant adverse impact on Project, given the extremely low penetration rate on the Crow Reservation. 31/ Both Project and Western Wireless will have many opportunities to expand their customer bases without detracting from one another. Designation of Western Wireless as an additional ETC will enable more consumers

30/ Letter to William E. Kennard, from Ben Nighthorse Campbell, Chairman, Committee on Indian Affairs, May 18, 1999 (see Exhibit E).

31/ See *supra*, note 5 and accompanying text.

that currently have no telephone service to receive telephone service that has value to them. All told, the public interest clearly favors designating Western Wireless as an ETC in addition to Project for its portion of the Crow Reservation service area.

III. THE COMMISSION SHOULD WAIVE CERTAIN RULES TO ENABLE WESTERN WIRELESS TO PROVIDE UNIVERSAL SERVICE TO THE CROW RESERVATION

In order for Western Wireless to economically provide universal service throughout the Crow Reservation, the Commission must grant waivers of its rules that govern: (1) the amount of high-cost and low-income funding to be disbursed, and (2) the timing of such disbursement. As discussed below, each of the following waiver requests satisfy the Commission's two-pronged waiver standard: special circumstances justify the requested waivers, and granting them would serve the public interest. 32/

A. In Light Of the Special Circumstances in Offering New Service to the Crow Reservation, Granting the Waivers Would Advance the Public Interest.

Special circumstances justify the requested waivers. The penetration rate on the Crow Reservation is extremely low. There is a desperate need for additional telecommunications services on the reservation, and a national policy priority to stimulate economic development on Indian reservations. 33/ All of these

32/ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

33/ *Federal Communications Commission Will Hold a Series of Public Hearings on Telephone Service for Indians On Reservations*, Public Notice, BO Docket 99-11, DA 99-201 (rel. Jan. 21, 1999); *Remarks by the President to the Pine Ridge Indian*

circumstances justify waivers of the rules to expedite the deployment of Western Wireless' planned universal service offering.

Granting the requested waivers also will serve the public interest. The waivers will make it possible for residents and businesses on the Crow Reservation to take advantage of an innovative new set of telecommunications offerings. The waivers will also facilitate competitive entry in one of the most rural and impoverished parts of the country, providing consumers in that area with the benefits of a broader choice among high quality, technologically advanced telecommunications services at reasonable rates. Finally, the waivers will make it possible for Western Wireless to receive a reasonable amount of universal service support on an expeditious basis, which in turn could induce other companies to consider following Western Wireless' lead and invest in economic development on Indian reservations.

B. The Commission Should Waive Its Rules Governing The Amount And Timing Of High-Cost and Low-Income Support.

1. High Cost Support

In order to provide universal service to the Crow Reservation, Western Wireless seeks a waiver of the rules that govern the support provided to competitive ETCs, with respect to the amount of funding Western Wireless will receive as a

Reservation, July 7, 1999 (at www.whitehouse.gov/WH/New/html/19990709.html); Remarks by the President to White House Conference: Building Economic Self-Determination in Indian Communities, August 6, 1998 (at www.pub.whitehouse.gov/urires/I2R?urn:pdi://oma.eop.gov.us/1998/8/10/6.text.1).

non-ILEC ETC serving an Indian reservation, and the timing of Western Wireless' receipt of those funds.

Amount of Support. The Commission should grant a waiver to recognize that the federal government bears a greater degree of responsibility than state commissions for addressing Indian economic development issues, and that state support may not be available to ETCs designated under Section 214(e)(6). Thus, Western Wireless seeks to receive -- with two very important caveats -- the amount of support calculated by the forward-looking cost model that will be used beginning January 1, 2000, to determine support for carriers serving areas served by non-rural telephone companies (including any upward adjustment to meet the "hold harmless" criterion for the ILECs in the area). One very important caveat to this funding request is as follows: since the FCC stands in place of the state for purposes of Section 214(e)(6), the federal universal service fund should provide *both* the federal share *and* the imputed state share of universal service support. In other words, the federal high-cost program should provide 100% of the support amount to Western Wireless on the Crow Reservation. This will ensure that the amount of universal service support funding Western Wireless receives will be sufficient to allow the company to provide service to any consumer on the Crow Reservation requesting service.

The second caveat is that, rather than using a national average cost benchmark to determine the amount of support, the amount of high-cost support should be based upon a unique benchmark developed specifically for this purpose.

Western Wireless hopes to be able to provide unlimited local calling in this extremely low-income area for \$10 per month, and respectfully requests the use of a \$10 per line benchmark for present purposes. Thus, the monthly amount of high-cost support would be equal to the cost for each wire center projected by the forward-looking cost model, less \$10. This is justified by the extreme poverty, the low level of telephone penetration, and the acute need for a stimulus to economic development on the Crow Reservation.

The disbursement of funding based on the current rules (which may or may not be revised once the forward-looking-cost-model-based system is implemented on January 1, 2000) also raises a timing problem. Under Section 54.307 of the current rules, 34/ the high-cost support Western Wireless would receive could be delayed by 18 months to two years. 35/ The Commission should waive this aspect of Section 54.307 to allow Western Wireless to begin receiving universal service

34/ 47 C.F.R. § 54.307.

35/ See Western Wireless Corp. Petition for Clarification or Rulemaking in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, filed Oct. 15, 1998. This is because a key aspect of the methodology for distributing support to both ILECs and non-ILEC ETCs is the calculation of the number of customer lines that a carrier serves in a study area. Due to a quirk in the Commission's Part 36 (ILEC) and Part 54 (non-ILEC ETC) rules, which use different methodologies for deriving the number of lines for ILECs and non-ILEC ETCs, non-ILEC ETCs, unlike the ILECs, have no opportunity to provide updated information. This results in ILECs being able to receive increased amounts of support based on an increased number of lines served, while non-ILEC ETC support is frozen based on data that may be up to 24 months out of date. Moreover, while ILECs can receive support immediately, non-ILEC ETCs such as Western Wireless at Crow would ordinarily have to wait as long as two years before receiving any universal service support.

support immediately upon providing universal service to the Crow Reservation. This will ensure that the universal service support funding Western Wireless receives will timely arrive, in accurate amounts, to allow Western Wireless to provide service upon request to any consumer within the Crow Reservation service area.

2. Low Income Support

The FCC should waive 47 C.F.R. § 54.403 to enable the federal universal service fund to provide *both* the federal share *and* the state share of support for the Lifeline and Link-Up subsidy programs for low-income individuals, in addition to the high-cost support described above. This is consistent with the fact that in Section 214(e)(6) situations, the FCC fills in for the role otherwise played by the states under Section 214(e).

3. Rural Telemedicine and Schools and Libraries Programs.

While Western Wireless is eager to provide services supported by the Rural Telemedicine and Schools and Libraries programs, it does not seek any waivers with respect to those programs at this time. Western Wireless supports the Act's and the Commission's goal of ensuring that these vital institutions receive the constant, ubiquitous universal service support necessary to their organizational missions. In particular, as soon it becomes feasible to do so, Western Wireless intends to use its LMDS licenses 36/ to provide high-capacity telecommunications

36/ In addition to its cellular licenses, Western Wireless, through a wholly-owned subsidiary, Western CLEC Corporation, holds the Billings, Montana Basic Trading Area ("BTA") B block (B041) Local Multipoint Distribution Service ("LMDS") license that covers the Crow reservation. The Billings BTA LMDS license provides Wes-

service, such as high-speed Internet access, to qualifying institutions (*i.e.*, schools, libraries, and health care facilities) as well as residential and business consumers on the reservation. Western Wireless also intends to provide technical assistance to qualifying institutions on the reservation to enable them to participate in the requisite competitive bidding process.

IV. ANTI-DRUG ABUSE CERTIFICATION

Western Wireless certifies that no party to this Petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. 37/

tern Wireless with added capability to serve the advanced telecommunications needs of individuals, schools, libraries, and health care providers.

37/ 21 U.S.C. § 862. See attached affidavit at Exhibit F.

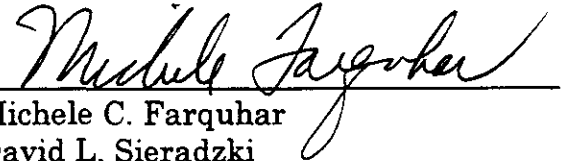
V. CONCLUSION

For the foregoing reasons, the Commission should designate Western Wireless as an ETC for an area that includes Crow Reservation and grant Western Wireless the requested waivers of its rules to enable the Company to provide universal service throughout the reservation.

Respectfully submitted,

**WESTERN WIRELESS
CORPORATION**

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August 4, 1999

EXHIBIT A

JOINT STATEMENT OF INTEREST

The Crow Tribal Council, representing the Crow Nation, and Western Wireless Corporation, doing business as Cellular One on the Crow Reservation, hereby release this Joint Statement of Interest concerning Western Wireless' plans to provide a new wireless local loop universal service offering on the Reservation, as well as to explore job and training opportunities related to this new service.


Whereas the Crow Tribal Council is interested in providing the Native American residents of the Crow Reservation with affordable telephone service that includes an expanded local calling area and supports Western Wireless' universal service efforts;

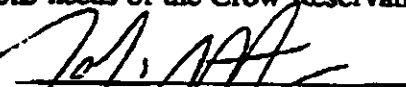
Whereas the Crow Tribal Council is interested in establishing a telecommunications infrastructure that can be used by the Reservation to support economic development;

Whereas Western Wireless holds cellular and Local Multipoint Distribution Service ("LMDS") licenses that serve the Reservation and is interested in using these licenses to provide affordable telephone universal service on the Reservation; and

Whereas Western Wireless is seeking designation as an Eligible Telecommunications Carrier ("ETC") for purpose of obtaining universal service support necessary to provide affordable telephone service on the Reservation:

The Crow Tribal Council and Western Wireless make this statement to indicate their interest in working together to serve the telecommunications needs of the Crow Reservation.


Clara Nomee, Madam Chairman
Crow Nation


John Stanton, Chairman
Western Wireless Corporation

Dated: 8-3-99

Dated: 8-4-99